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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,649	12/11/2003	Andrew Christopher Wright	DSGI-1000US0	2170

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EXAMINER

BOGART, MICHAEL G

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 09/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/733,649

Applicant(s)

WRIGHT ET AL.

Examiner

Michael G. Bogart

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 15-65 is/are pending in the application.
- 4a) Of the above claim(s) 1-12 and 34-48 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13, 15-33 and 49-65 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>22 August 2006</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

Claim 50 objected to because of the following informalities: In line 3, replace “compoiste” with --composite--. Appropriate correction is required.

Claim Rejections – 35 USC § 103

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. § 103(c) and potential 35 U.S.C. § 102(e), (f) or (g) prior art under 35 U.S.C. § 103(a).

Claims 13, 15, 17-24 and 28-33 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Guevara *et al.* (US 6,086,571 A; hereinafter “Guevara”).

Regarding claim 13 Guevara teaches a disposable absorbent garment (20) comprising:
a topsheet (26);

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a backsheet (28);

an absorbent core (30) disposed between said topsheet (26) and said backsheet (28) such that a longitudinal centerline of said garment (20) extends through said topsheet (26), said backsheet (28), and said absorbent core (30), wherein said topsheet (26), said backsheet (28) and said absorbent core (30) provide a central body (24) of said disposable absorbent garment (20); and

an elastic composite band (38) attached to said central body (24), said elastic composite band (38) having a first side edge attached to said central body (24), a second side edge, and a composite centerline extending in a direction extending continuously between, and in generally parallel relation with, said side edges, said elastic composite band (38) including a base layer and top layer and an elastic construction (80) disposed between the base layer and top layer and spaced inwardly from each said side edge; and

wherein said elastic construction (80) includes an arrangement of a plurality of spaced apart and independent elastic elements (the side ways extending portions of elastic thread (80)) distributed along a direction extending between said side edges from a first elastic element in the arrangement to a last elastic element in the arrangement to form a substantially continuous, laterally elasticized region extending substantially continuously from a vicinity of said first elastic element through the last elastic element, said elastic elements being aligned in nearly perpendicular relation with said composite centerline; and

wherein said elastic elements are spaced inwardly from said side edges of said base layer and top layer to provide a first non-elasticated region (120) between said elasticized region and

said first side edges and a second non-elasticated region (70) between said elasticated region and said second side edge (col. 10, lines 17-42)(see annotated fig. 4, *infra*).

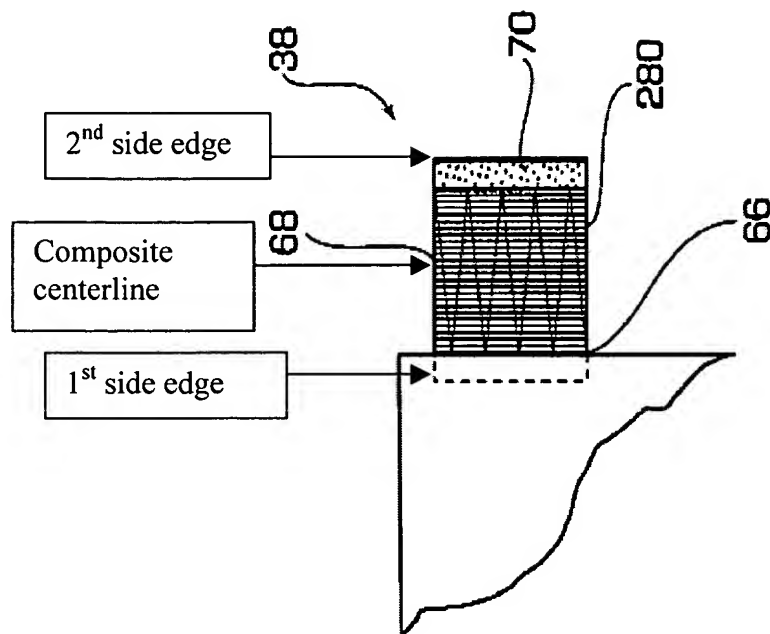
Guevara does not teach that the elastic elements are generally perpendicular to the longitudinal centerline of the composite centerline. However, they do extend at a very obtuse or shallow angle that is almost 90° or perpendicular to the composite longitudinal centerline. Mere changes in shape are not sufficient to patentably distinguish an invention over the prior art. See *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966)(The court held that the configuration of the claimed disposable plastic nursing container was a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed container was significant.). In the instant case, modifying the reference's almost parallel elastic threads to be generally parallel elastic threads would not significantly change their stretch performance. The alternative embodiment of Guevara's fig. 5 shows perpendicular elastic threads (80) that result in satisfactory or equivalent elastic performance.

Regarding claim 15, Guevara teaches an elasticized region (80) that is disposed generally centrally between said side edges.

Regarding claim 17, Guevara teaches that said elastic elements (80) are elastic strands (80, 280).

Regarding claim 18, Guevara teaches that each of said plurality of elastic strands (80) is nearly aligned in perpendicular relation with said side edges.

Regarding claim 19, Guevara teaches that said elastic elements are disposed in mutual generally parallel relation (see fig. 4).

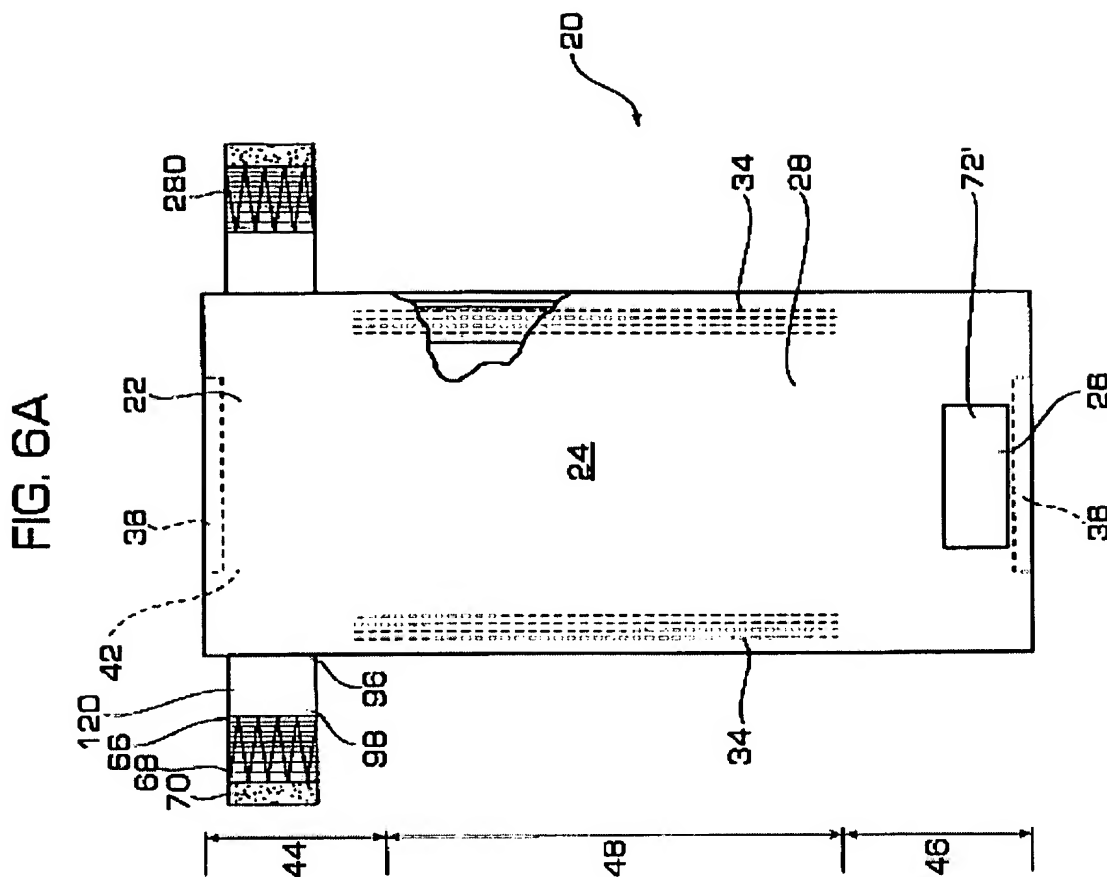


Regarding claim 22, Guevara teaches that one of said first and second non-elasticized regions (70, 70') is equipped with a fastening element selected from the group of fastening elements consisting of: adhesive elements and hook and landing elements (col. 11, lines 10-18).

Regarding claims 23-25, 28 and 53, Guevara teaches two elastic bands (38, 40) disposed on at least one end edge (44) or on opposite sides of an end edge (44) of an absorbent article (20)(fig. 4).

Regarding claim 29, Guevara teaches an elasticized region (80) that is disposed generally centrally between said side edges.

Regarding claim 30, Guevara teaches that the elastic elements are equally spaced apart from one another (fig. 6A).



Regarding claims 31, 50, 51 and 56, Guevara teaches that said elastic elements are disposed in mutual generally parallel relation (fig. 4).

Regarding claims 20, 21, 32, 33, 49, 54, 57-65 these claims include limitations concerning the machine direction of the elastic band and how it is formed, which makes these claims product-by-process claims. Product-by-process claims are not limited to the manipulations of the recited steps, only the limitations implied by the steps. “[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious

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from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.” *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985)(citations omitted). MPEP § 2113. The finished band of Guevara meets all of the claimed structural limitations. See figures 5 and 6A. Specifically regarding claims 58-61 and 63-65, see the discussion of claims 30 and 31, *supra*.

Regarding claims 52 and 55, Guevara teaches that the band includes top and base layers (col. 10, lines 17-42).

Claim 16 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Guevara as applied to claims 13-15, 17-24 and 28-33 above, and further in view of Gibbs (US 2003/0139725 A1).

Guevara does not teach a second elasticized region within the side edges of an elastic band.

Gibbs teaches an absorbent article having elastic waist tabs (32) which have elastic regions (110) separated by a relatively non-elastic region (132) between the side edges (130, 134). This structure prevents necking down and the associated buckling and bunching when the tab is stretched (see fig. 3, *infra*).

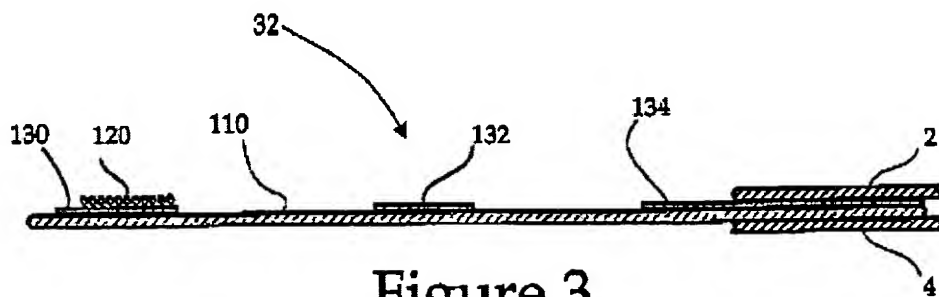


Figure 3

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At the time of the invention, it would have been obvious to one of ordinary skill in the art to add the dead zone of Gibbs to bisect the elastic structure of the band of Guevara in order to prevent bunching and buckling of the tab when stretched.

Claims 26 and 27 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Guevara as applied to claims 13-15, 17-24 and 28-33 above, and further in view of Jarpenberg *et al.* (US 2003/0144643 A1; hereinafter “Jarpenberg”).

Guevara does not teach tabs at both ends or ear portions.

Jarpenberg teaches an absorbent article with ears and tabs at both the front and rear waist portions (see fig. 11, below).

At the time of the invention, it would have been obvious to one of ordinary skill in the art to add the second set of tabs and/or the ear portions to facilitate fitting of the absorbent article on a wearer.

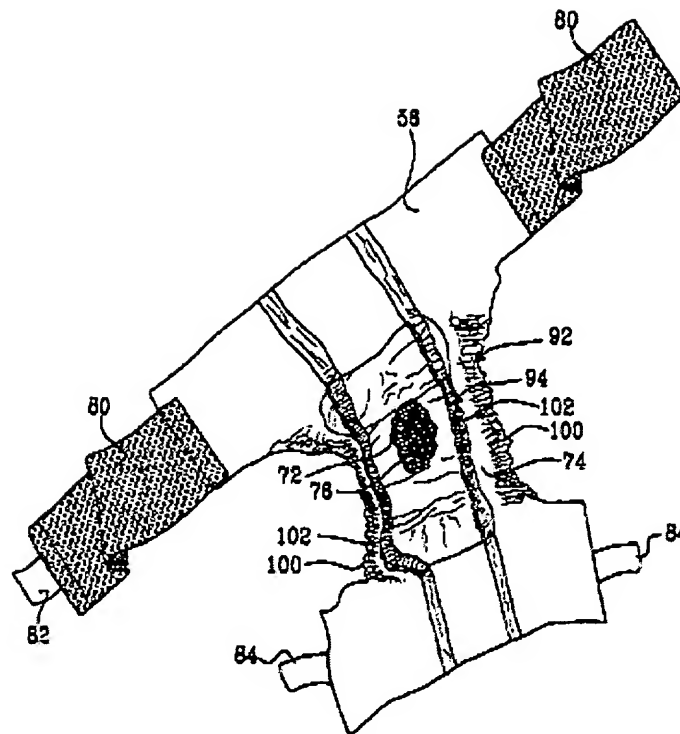


FIG. 11

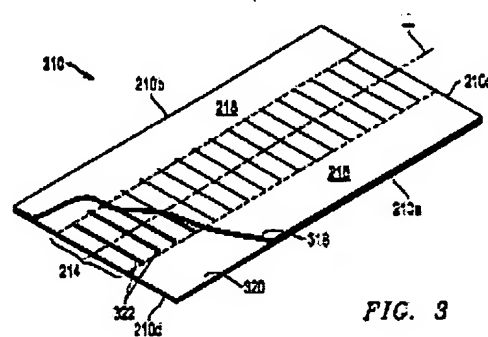
Response to Arguments

Applicants' arguments filed 27 June 2006 have been fully considered but they are not persuasive.

Applicants' arguments regarding the reference to Toyoda are moot in view of the new grounds of rejection. Regarding the reference to Guevara, applicants assert that:

Guevara does not teach or suggest a substantially continuous, laterally elasticized region formed by spaced apart elastic elements that are aligned in generally perpendicular relation with the composite centerline. The "composite centerline" of claim 13 is defined as extending in a direction extending continuously between a first side edge attached to the central body and a second side edge, and is in generally parallel relation with the side edges. In view of which edges are clearly "side edges" in Guevara, an equivalent "composite centerline" in Guevara would be aligned in parallel relation with the plurality of elastics. These elastic elements are, therefore, different from those of claim 13.

This argument is not persuasive because claim 13, as enabled by the specification, claims an elastic composite band (210) having a first side edge (210a) and a second side edge (210b). The composite centerline (LL) extends continuously between and parallel to the side edges (210a, 210b)(see fig. 3, infra). The elastic elements (322) are generally perpendicular to the composite centerline.



The reference's side edges and composite centerline as interpreted herein are shown in annotated fig. 4, supra. The claims are given the broadest reasonable interpretation. MPEP § 2111. The instant specification does not include any specific definition of a "composite centerline" that is contrary to this interpretation of the Guevara reference. They extend nearly perpendicular to the composite centerline and side edges.

Applicants further assert that Guevara does not provide an elastic construction that is spaced inwardly from the side edge, and that the elastics of Guevara extend to at least one side edge common with the diaper.

This argument is not persuasive because the individual elastic strands (80, 280) do not extend all the way to the side edge overlapping the side edge of the absorbent body (24), due to the back and forth zig-zag pattern of the elastic threads (col. 10, lines 17-42)(see fig. 4, supra).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

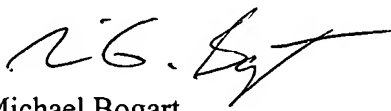
In the event the examiner is not available, the Examiner's supervisor, Tatyana Zalukaeva may be reached at phone number (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for formal communications. For informal communications, the direct fax to the Examiner is (571) 273-4933.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

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may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Michael Bogart
11 September 2006

TATYANA ZALUKAEVA
SUPERVISOR, PRIMARY EXAMINER

